No. 15-674

IN THE

Supreme Court of the United States

UNITED STATES OF AMERICA, et al.,

Petitioners,

v.

STATE OF TEXAS, *et al.*,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

AMICUS CURIAE BRIEF OF MAJOR CITIES CHIEFS ASSOCIATION, POLICE EXECUTIVE RESEARCH FORUM, AND INDIVIDUAL SHERIFFS AND POLICE CHIEFS IN SUPPORT OF PETITIONERS

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES ii

INTEREST OF THE AMICI CURIAE 1

SUMMARY OF ARGUMENT 4

ARGUMENT 5

I. The Deferred Action Initiative Improves Public Safety by Enabling Community Cooperation With Police, and thus the Nationwide Injunction Impairs Effective Policing 6

II. The Deferred Action Initiative Facilitates Noncitizens' Ability to Obtain Valid Identification, Benefits Law Enforcement, and Improves Public Safety, and thus the Nationwide Injunction Impairs Effective Policing 12

CONCLUSION 15

TABLE OF AUTHORITIES

Statutes

8 U.S.C. § 1324a(h)(3) 12

Regulations

8 C.F.R. § 274a.12(c)(14) 12

Other Authorities

Department of Homeland Security, USICS, Instructions for I-765 Application for Employment Authorization 12

Enhancing Community Policing with Immigrant Populations: Recommendations from a Roundtable Meeting of Immigrant Advocates and Law Enforcement Leaders, U.S. Department of Justice Office of Community Oriented Policing Services (April 2010) 9

Matthew Lysakowski, Albert Antony Pearsall III, and Jill Pope, *Policing in New Immigrant Communities*, U.S. Department of Justice, Office of Community Oriented Policing Services (June 2009) 8

Natalia Lee, Daniel J. Quinones, Nawal Ammar & Leslye E. Orloff, *National Survey of Service Providers on Police Response to Immigrant Crime Victims, U Visa Certification and Language Access*, National Immigrant Women's Advocacy Project (April 2013) 11

Nik Theodore, *Insecure Communities: Latino Perceptions of Police Involvement in Immigration Enforcement*, Univ. of Illinois Chicago (May 2013) 8

Oversight of the Administration's Misdirected Immigration Enforcement Policies: Examining the Impact of Public Safety and Honoring the Victims Before the S. Comm. on the Judiciary, Jul. 21, 2015 (statement of Tom Manger, Chief of Police, President of the Major Cities Chiefs Association) 7, 9

Police Executive Research Forum, Voices from Across the Country: Local Law Enforcement Officials Discuss the Challenges of Immigration Enforcement, Police Executive Research Forum (2012) 13

Police Foundation, Anita Khashu, *The Role of Local Police: Striking a Balance Between Immigration Enforcement and Civil Liberties* (2009) 7, 9

Robert Wasserman, *Guidance for Building Communities of Trust*, U.S. Department of Justice, Office of Community Oriented Policing Services (2010) 7

Social Security Numbers For Noncitizens, Social Security Administration, SSA Publication No. 05-10096 (Aug. 2013) 12

Southern Poverty Law Ctr., *Under Siege: Life for Low-Income Latinos in the South* (Apr. 2009) 10

Sukhvir S. Brar, *Estimation of Fatal Crash Rates for Suspended/ Revoked and Unlicensed Drivers in California*, California Department of Motor Vehicles (2012) 14

INTEREST OF THE AMICI CURIAE[1]

Amici are associations of local law enforcement officials and individual current law enforcement officials. They have deep expertise in local law enforcement and, in addition, on cooperative federal-state law enforcement activities. *Amici* submit this brief to inform the Court of the significant benefits of petitioners' Deferred Action Initiative[2] for local law enforcement entities and to the communities they serve—benefits that can be realized only if the court of appeals' injunction is reversed.

Amici are:

- Major Cities Chiefs Association, which is a professional association of chiefs and sheriffs representing the largest cities in the United States, serving more than 68 million people;

- Police Executive Research Forum, which is a national membership organization of police executives from the largest city, county and state law enforcement agencies dedicated to improving policing and advancing

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[1] Pursuant to Supreme Court Rule 37.6, *amici* state that no counsel for any party authored this brief in whole or in part and no entity or person, aside from amici, their members, and their counsel, made any monetary contribution intended to fund the preparation or submission of this brief. All counsel of record were timely notified of the intent to file this brief, and have consented to this filing.

[2] The initiative, which is described in App. 411a-419a of the Petition for a Writ of Certiorari, is referred to throughout as the "Deferred Action Initiative."

professionalism through research and involvement in public policy debate;

- Individual Police Chiefs and Sheriffs, including:
    - Chief Art Acevedo, Austin, Texas, Police Department;[3]
    - Chief David Bejarano, Chula Vista, California, Police Department;
    - Chief Charlie Beck, Los Angeles, California, Police Department;
    - Chief Richard Biehl, Dayton, Ohio, Police Department;
    - Chief Chris Burbank (Ret.), Salt Lake City, Utah, Police Department;
    - Sheriff Mark C. Curran Jr., Lake County, Illinois, Sheriff's Office;
    - Chief Sergio Diaz, Riverside, California, Police Department;
    - Deputy Chief Tim Doubt, Salt Lake City, Utah, Police Department;
    - Deputy Chief Krista Dunn (Ret.), Salt Lake City, Utah, Police Department;
    - Chief Jerry Dyer, Fresno, California, Police Department;
    - Sheriff Tony Estrada, Santa Cruz County, Arizona, Sheriff's Office;
    - Commissioner William B. Evans, Boston, Massachusetts, Police Department;
    - Sheriff Paul H. Fitzgerald, Story County, Iowa, Sheriff's Office;

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[3] For individuals, affiliations are provided for identification purposes only.

- Special Agent in Charge Timothy Fuhrman (Ret.), Mobile, Alabama, FBI;
- Assistant Chief Randall Gaber, Madison, Wisconsin, Police Department;
- Chief Ronald Haddad, Dearborn, Michigan, Police Department;
- Chief Dwight Henninger, Vail, Colorado, Police Department;
- Chief Kim Jacobs, Columbus, Ohio, Police Department;
- Chief A.M. Jacocks, Jr. (Ret.), Virginia Beach, Virginia, Police Department;
- Chief Michael Koval, Madison, Wisconsin, Police Department;
- Chief Jose Lopez Sr., Durham, North Carolina, Police Department;
- Chief Tom Manger, Montgomery County, Maryland, Police Department;
- Sheriff Bill McCarthy, Polk County, Iowa, Sheriff's Office;
- Sheriff Jim McDonnell, Los Angeles County, California, Sheriff's Department;
- Chief William McManus, San Antonio, Texas, Police Department;
- Chief Roy W. Minter Jr., Peoria, Arizona, Police Department;
- Lt. Andy Norris, Tuscaloosa County, Alabama, Sheriff's Office;
- Chief Kathleen O'Toole, Seattle, Washington, Police Department;
- Sheriff Joe Pelle, Boulder County, Colorado, Sheriff's Office;

- Commissioner Charles H. Ramsey, Philadelphia, Pennsylvania, Police Department;
- Sheriff Will Reichardt, Skagit County, Washington, Sheriff's Office;
- Chief Lee W. Russo, West Valley City, Utah, Police Department;
- Chief Greg Suhr, San Francisco, California, Police Department;
- Chief J. Scott Thompson, Camden, New Jersey, Police Department;
- Chief Michael Tupper, Marshalltown, Iowa, Police Department;
- Sheriff John Urquhart, King County, Washington, Sheriff's Office;
- Sheriff Lupe Valdez, Dallas County, Texas, Sheriff's Department;
- Chief Roberto Villaseñor, Tucson, Arizona, Police Department;
- Chief Robert C. White, Denver, Colorado, Police Department;
- Sheriff Richard D. Wiles, El Paso County, Texas, Sheriff's Office.

SUMMARY OF ARGUMENT

The Deferred Action Initiative will improve public safety nationwide by encouraging community cooperation with police, an essential element to effective policing and improving public safety. The Initiative also will provide individuals with the opportunity to obtain verified and secure identification, which aids law enforcement throughout the country in carrying out its day to day duties. The court of appeals' ruling upholding

the injunction of the Initiative, if permitted to stand, prevents communities nationwide from realizing these very significant benefits. Due to the national significance of the injunction, this Court should grant review and overturn the Fifth Circuit's decision.

ARGUMENT

The nationwide injunction upheld by the Fifth Circuit harms the ability of local law enforcement authorities to effectively police and protect the communities they serve. This Court's intervention is urgently needed to set aside the court of appeals' ruling so that *amici* can better protect the communities they serve.

The Deferred Action Initiative provides individuals with a process to register with the federal government and receive temporary relief from removal, and permits them, under existing regulations, to receive work authorization and other identity documents. It will improve public safety in several important ways.

First, the Deferred Action Initiative encourages community cooperation with police, an essential element to effective policing and improving public safety.

Second, the Initiative facilitates a shift in federal law enforcement resources away from individuals with family ties to their communities and no criminal convictions, leading to more effective and resource-conscious policing with attendant public safety benefits.

Finally, the Deferred Action Initiative provides individuals, under existing regulations, to obtain

verified and secure identification, including an employment authorization document, which aids law enforcement in carrying out day to day duties.

The injunction will harm law enforcement's ability to effectively protect the public at large in communities across the nation. Due to the significant nationwide impact of the injunction, this Court should grant certiorari, and reverse the Fifth Circuit's judgment.

I. The Deferred Action Initiative Improves Public Safety by Enabling Community Cooperation With Police, and thus the Nationwide Injunction Impairs Effective Policing

Law enforcement cannot successfully protect a community without the cooperation of those individuals who make up the community. At both the federal and state level, community policing—the cooperative approach under which law enforcement and community members work together to combat crime—has resulted in better and more efficient policing, and has thus become a cornerstone of modern law enforcement. Because community policing is an approach where police officers engage communities in a working partnership to reduce crime and promote public safety, it requires police to interact with neighborhood residents in a manner that will build

trust and improve the level of cooperation with the police department.[4]

One barrier to the development of trust required for effective community policing is the fact that individuals subject to deportation or removal may fear that interactions with local and state law enforcement could result in scrutiny of one's immigration status, or the status of family members or neighbors. Local law enforcement officers cannot prevent or solve crimes if victims or witnesses are unwilling to talk to them because of the fear of being deported. As one law enforcement officer has put it, "[t]o do our job we must have the trust and respect of the communities we serve. . . . Cooperation is not forthcoming from persons who see their police as immigration agents."[5]

For example, a domestic violence victim who doesn't have legal status may not call police for fear

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[4] *See* Police Foundation, Anita Khashu, *The Role of Local Police: Striking a Balance Between Immigration Enforcement and Civil Liberties* 24 (2009), *available at* http://www.policefoundation.org/wp-content/uploads/2015/06/The-Role-of-Local-Police-Narrative.pdf; *see also* Robert Wasserman, *Guidance for Building Communities of Trust*, at 7, U.S. Department of Justice, Office of Community Oriented Policing Services (2010), *available at* http://www.cops.usdoj.gov/files/RIC/Publications/e071021293_BuildingCommTrust.pdf.

[5] *Oversight of the Administration's Misdirected Immigration Enforcement Policies: Examining the Impact of Public Safety and Honoring the Victims Before the S. Comm. on the Judiciary*, Jul. 21, 2015 (statement of Tom Manger, Chief of Police, President of the Major Cities Chiefs Association), *available at* http://www.judiciary.senate.gov/imo/media/doc/07-21-15%20Manger%20Testimony.pdf.

that she or her abuser will be deported.[6] One survey showed that:

- 44 percent of surveyed Latinos are less likely to contact police officers if they have been the victim of a crime because they fear that police officers could use the interaction as an opportunity to inquire into their immigration status or that of people they know;
- 45 percent of Latinos stated that they are less likely to voluntarily offer information about crimes, and 45 percent are less likely to report a crime because they are afraid the police will ask them or people they know about their immigration status; and
- 70 percent of undocumented immigrants reported they are less likely to contact law enforcement authorities if they were victims of a crime.[7]

Fear of immigration enforcement preventing cooperation with police would extend to authorized immigrants living in mixed-status households who

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[6] *See* Matthew Lysakowski, Albert Antony Pearsall III, and Jill Pope, *Policing in New Immigrant Communities*, U.S. Department of Justice, Office of Community Oriented Policing Services (June 2009), *available at* http://www.vera.org/sites/default/files/resources/downloads/e060924209-NewImmigrantCommunities.pdf

[7] Nik Theodore, *Insecure Communities: Latino Perceptions of Police Involvement in Immigration Enforcement*, at 5-6, Univ. of Illinois Chicago (May 2013), *available at* http://www.academia.edu/4738588/Insecure_Communities_Latino_Perceptions_of_Police_Involvement_in_Immigration_Enforcement.

may fear contact with police could lead to the deportation of family members and other loved ones.[8]

Fear of interacting with law enforcement makes immigrants especially vulnerable to all types of criminal and civil violations. These include domestic violence, sexual assault, gang activity, human trafficking, nonpayment by employers, and financial scams.[9]

Indeed, criminals intentionally target immigrants because their reluctance to report crimes: "[w]hen immigrants come to view their local police and sheriffs with distrust because they fear deportation, it creates conditions that encourage criminals to prey upon victims and witnesses alike."[10]

Furthermore, many immigrant laborers become prime targets for robbery and other crimes because they lack the ability to open bank accounts (in part due to identification issues discussed below in Part II), and thus criminals know they are more likely

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[8] *See* Khashu, *supra* note 4, at 24 (estimating that 85% of immigrants live in mixed-status families) (citation omitted).

[9] *See Enhancing Community Policing with Immigrant Populations: Recommendations from a Roundtable Meeting of Immigrant Advocates and Law Enforcement Leaders*, at 16, U.S. Department of Justice Office of Community Oriented Policing Services (April 2010), *available at* http://www.cops.usdoj.gov/Publications/e041016266-Enhancing-CP-Immigrant-Populations_b.pdf.

[10] *See* Statement of Tom Manger, *supra* note 5.

than others to be carrying large sums of cash.[11] Thus, the desire to avoid contact with police emboldens individuals engaged in criminal enterprises, increases crime, and decreases public safety for whole communities.

The Deferred Action Initiative encourages immigrant cooperation with police and benefits community policing by removing the fear of detention and removal for the millions of eligible individuals who are longstanding members of the communities that local law enforcement serves. Legitimizing the presence of otherwise law-abiding immigrants with already strong ties to their neighborhoods, and reassuring them that their cooperation with law enforcement will not separate them from their lives and families in the United States makes them much more willing to cooperate with law enforcement officers.

This is not mere supposition. A study found that recipients of the U-visa, a form of immigration relief created by Congress as part of the Violence Against Women Act of 2000 offering temporary legal immigration status to immigrants who have been victims of certain criminal activities, were more likely to interact with local law enforcement by reporting criminal activity and otherwise assisting in police work.[12] The Deferred Action

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[11] Southern Poverty Law Ctr., *Under Siege: Life for Low-Income Latinos in the South*, at 6 (Apr. 2009), *available at* http://www.splcenter.org/sites/default/files/downloads/UnderSiege.pdf (noting that immigrant laborers have "been dubbed walking ATMs").

[12] *See* Natalia Lee, Daniel J. Quinones, Nawal Ammar & Leslye E. Orloff, *National Survey of Service Providers on*

Initiative would have the same effect on a broader scale, improving public safety for entire communities and allowing *amici* to do their jobs more effectively.

Additionally, the Deferred Action Initiative guidelines, which identify removal priorities, help the federal government to focus its removal efforts on individuals with certain criminal convictions and those who pose threats to national security and public safety. This shift in priorities at the federal level will in turn help local law enforcement keep communities safer. In addition to removing true threats to public safety, individuals who are *not* priorities for removal and who have existing ties to the community will be more likely to cooperate with local law enforcement entities.

The injunction granted by the district court and upheld by the Fifth Circuit is thus harming the efforts of local law enforcement nationwide to build trust with community members, and is adversely affecting public safety. Because of this significant national impact, this Court should grant certiorari and reverse the decision below.

Police Response to Immigrant Crime Victims, U Visa Certification and Language Access, at 6-7, National Immigrant Women's Advocacy Project (April 2013), *available at* http://www.niwap.org/reports/Police-Response-U-Visas-Language-Access-Report-4.6.13.pdf (citing prior research finding that "the rate at which immigrant victims called the police for help and were helpful or willing to be helpful in the detection, investigation, prosecution, conviction or sentencing of a perpetrator was extremely high (99.45%) among U Visa applicants and recipients").

II. The Deferred Action Initiative Facilitates Noncitizens' Ability to Obtain Valid Identification, Benefits Law Enforcement, and Improves Public Safety, and thus the Nationwide Injunction Impairs Effective Policing

Individuals granted deferral from removal under the Deferred Action Initiative are, under existing regulations, eligible to apply for a federal employment authorization document ("EAD"). The EAD comes in the form of a card issued by the United States Citizenship and Immigration Services, and includes the recipient's photograph.[13] Individuals who receive employment authorization would also be eligible to obtain a Social Security number and card.[14] These forms of identification alone improve public safety by permitting individuals to work lawfully and to avoid exploitation and other types of crimes that target undocumented individuals.

Further, to the extent the Deferred Action Initiative facilitates the issuance of identification to undocumented immigrants, including an

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[13] *See* 8 U.S.C. § 1324a(h)(3); 8 C.F.R. § 274a.12(c)(14); *see also* Department of Homeland Security, USICS, Instructions for I-765 Application for Employment Authorization, *available at* http://www.uscis.gov/sites/default/files/files/form/i765instr.pdf (describing EAD as a "card" and requiring two passport-style photos).

[14] *See Social Security Numbers For Noncitizens*, Social Security Administration, SSA Publication No. 05-10096 (Aug. 2013), *available at* http://www.ssa.gov/pubs/EN-05-10096.pdf.

employment authorization document, a social security card, and a state driver's license or identification, the program would greatly assist law enforcement officers' ability to properly identify individuals in everyday interactions, making the jobs of those officers easier and more effective.

For example, officers engaged in active investigations need to be able to verify the identity of witnesses to, or victims of, crimes. Daily tasks such as making a stop for a driving infraction are made easier when an officer can identify the individual in question and issue a citation. If an officer stops a motorist who does not have a license or other form of identification, the officer may have no other option than to arrest the individual, bring him to the station, and obtain fingerprint information in order to securely identify the individual. As one police chief has stated, "[w]hen we stop cars and the driver doesn't have a driver's license, there are very few options for the officers and troopers. If there is no other source of identification, we're going to use fingerprint identification. That means the person has to be put in the police car and taken to jail so we can find out who they are."[15]

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[15] *See Police Executive Research Forum, Voices from Across the Country: Local Law Enforcement Officials Discuss the Challenges of Immigration Enforcement*, at 15-16, Police Executive Research Forum (2012), available at http://www policeforum.org/assets/docs/Free_Online_Documents/Immigration/voices%20from%20across%20the%20country%20%20local%20law%20enforcement%20officials%20discuss%20the%20challenges%20of%20immigration%20enforcement%202012.pdf.

Such situations take time and unnecessarily divert resources away from true threats to public safety, such as investigations and responses to violent offenses. As a former police chief has stated, "[t]he question is an economic one for police, because every time we stop somebody who has no identification, it takes a lot of manpower to try to identify that person. An officer will spend up to two to three hours to determine who an arrestee is. . . . They don't have the resources to start dealing with the problem."[16]

Second, the benefits of access to a license or other form of identification strongly outweigh any state-imposed licensing costs. Studies have provided strong evidence that unlicensed drivers are much more hazardous on the road than are validly licensed drivers, and even more hazardous that drivers whose licenses were suspended or revoked.[17] The increase in motorists who are trained, tested, licensed, and insured will improve road safety overall.

The ability of millions of individuals to obtain identification, including a federal employment authorization document, a social security number and card, and a driver's license under state law through the Deferred Action Initiative will greatly benefit local law enforcement officers' ability to conduct their jobs effectively. Again, the injunction granted by the district court and upheld by the

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[16] *Id.*

[17] *See, e.g.*, Sukhvir S. Brar, *Estimation of Fatal Crash Rates for Suspended/ Revoked and Unlicensed Drivers in California*, California Department of Motor Vehicles (2012), *available at* http://www.dol.wa.gov/about/docs/UnlicensedDriverStudy.pdf.

Fifth Circuit prevents these benefits from being realized nationwide and therefore should be reviewed, and reversed, by this Court.

CONCLUSION

The Deferred Action Initiative will improve public safety by encouraging community cooperation with police and by providing individuals with a greater opportunity to obtain verified and secure identification, which would aid law enforcement in carrying out its day to day duties. The population included in the Deferred Action Initiative is one with long-standing ties to the communities served by *amici*, and the injunction will harm this population and law enforcement's ability to effectively protect not only these individuals, but the public at large in communities across the nation. This Court should grant certiorari, and reverse the Fifth Circuit's judgment.

Respectfully submitted,

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November 30, 2015